



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/803,702	02/21/1997	VERNON C. MAINO	P-3639P1	9092

7590 05/22/2006

DOUGLAS A PETRY PHD
BECTON DICKINSON AND COMPANY
1 BECTON DRIVE
FRANKLIN LAKES, NJ 07417-1880

EXAMINER

ART UNIT	PAPER NUMBER
----------	--------------

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 08/803,702	Applicant(s) MAINO ET AL.	
	Examiner G. R. Ewoldt, Ph.D.	Art Unit 1644	

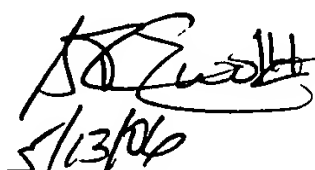
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 24 January 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.


5/13/06
G.R. EWOLDT, PH.D.
PRIMARY EXAMINER

Continuation of 10. Other (including any explanation in support of the above items): 37 CFR 41.37 requires a concise explanation of the subject matter defined in each of the independent claims as well as for each dependent claim argued separately, referring to the specification by page and line number. Claims 19, 64, and 65 are summarized. First note that the 6 page Summary cannot be considered to be "concise" as the majority of it comprises background. Further note that many of the page and line number cites do not disclose the steps of the claimed method for which they are cited. For example, page 5, lines 15-17 are cited as disclosing the second step of Claim 19. Yet a review of the lines discloses that they merely indicate the concept that the use of agents that block intracellular cytokine secretion enhances their detection when added for a 4 hour incubation. This concept that applies only to a specific time frame, does not describe or support the step of the claimed method for which it is cited. Further, it is noted that at page 31 Appellant states that Claim 39, which was not separately summarized as would be required, stands only with Claim 64 in respect to enablement. Regarding the claims standing or falling together for lack of enablement, at page 25 Appellant states that all the claims on appeal stand or fall together, yet at page 31 Appellant states that Claims 39 stand only with Claim 64 and at page 32 Appellant states that Claim 65 stands alone.